

STATE OF INDIANA

FILED

INDIANA UTILITY REGULATORY COMMISSION

JUL 27 2001

In the Matter of the Petition of Indiana Bell	}	
Telephone Company, Incorporated d/b/a	}	
Ameritech Indiana, Pursuant to I.C. 8-1-2-61,	}	
for a Three-Phase Process for Commission	}	Cause No. 41657 (EDR-1)
Review of Various Submissions of Ameritech	}	
Indiana to Show Compliance with Section 271(c)	}	
of the Telecommunications Act of 1996	}	

**AMERITECH INDIANA'S VERIFIED
MOTION FOR STAY PENDING APPEAL**

Pursuant to 170 IAC 1-1.1-12(a)(5) & -26 and IND. TRIAL RULE 62, Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana ("Ameritech Indiana") respectfully moves the Indiana Utility Regulatory Commission (the "Commission") to stay implementation of its final determination entered June 27, 2001 in expedited dispute resolution proceeding number one ("EDR-1") in Cause No. 41657 (the "EDR-1 Order") pending final resolution of the appeal of the EDR-1 Order (the "EDR-1 Appeal") by Ameritech Indiana, Advanced Data Services of Indiana, Inc. d/b/a SBC Advanced Solutions, Inc. ("AADS") and Ameritech Interactive Media Services, Inc. ("AIMS"). In support of this Motion, Ameritech Indiana states:

1. Cause No. 41657 is a proceeding initiated at the request of Ameritech Indiana for Commission review of various matters in connection with Ameritech Indiana's efforts to show compliance with Section 271(c) of the Telecommunications Act of 1996, 47 U.S.C. § 271(c). An aspect of the proceeding includes certain third-party independent testing of Ameritech Indiana's operations support system ("OSS"). EDR-1 involved whether certain interstate DSL Transport

offered at wholesale by AADS to Internet Service Providers (“ISPs”), including AIMS (“Wholesale DSL Transport”), should be included in testing of Ameritech Indiana’s OSS (the “OSS Test”).

2. The EDR-1 Order determined that the Wholesale DSL Transport was required to be included in the OSS Test. Ameritech Indiana, AADS and AIMS have appealed the EDR-1 Order, timely initiating the EDR-1 Appeal by filing their Joint Notice of Appeal on July 27, 2001.

3. The EDR-1 Appeal focuses on a discrete, dispositive legal issue – to wit, whether or not the EDR-1 Order was correct in determining that the Wholesale DSL Transport is, under pertinent aspects of the governing federal law, properly included in the OSS Test. Ameritech Indiana specifically contends that under the governing federal law:

(a) Such inclusion in the OSS Test would be proper only if the DSL Transport in question is *both* (i) telecommunications services (not information services), *and* (ii) provided at retail (not at wholesale);

(b) The Wholesale DSL Transport is not properly included in the OSS Test by virtue of its being provided at wholesale by AADS to its ISP customers, including AIMS, since it is provided by AADS only at wholesale, not retail; and

(c) The Wholesale DSL Transport is also not properly included in the OSS Test by virtue of its being acquired by AIMS at wholesale from AADS and then included as a component of DSL Internet access services provided by AIMS to its customers at retail, since the services provided by AIMS (including any DSL component thereof) are information services, not telecommunications services.

4. Ameritech Indiana respectfully submits that it has a substantial likelihood of success on the merits of the discrete legal issue on which the EDR-1 Appeal focuses. There is also no question that this legal issue will be dispositive: If Ameritech Indiana’s position on this legal issue

prevails, inclusion of the Wholesale DSL Transport in the OSS Test will be held erroneous and the EDR-1 Order will be reversed. If Ameritech Indiana's position does not prevail, inclusion of the Wholesale DSL Transport in the OSS Test will be held correct and the EDR-1 Order will be affirmed.

5. For several reasons, implementation of the EDR-1 Order – which would require altering the OSS Test to include the Wholesale DSL Transport – should be stayed pending resolution of the EDR-1 Appeal that will decide the discrete legal issue of whether such inclusion is proper under governing federal law. The reasons for staying implementation include:

(a) Including the Wholesale DSL Transport will introduce a new participant (AADS) and additional levels of complexity into the OSS Test. Among other things, Commission staff, the test consultants – KPMG Consulting (“KPMG”) and Hewlett-Packard Company (“HP”) – and others involved in the Test will need to become familiar with the OSS system of AADS, modify the Master Test Plan, devise and implement appropriate tests of that AADS OSS system, and agree on appropriate performance measures involving the Wholesale DSL Transport. In addition to imposing additional expense on Ameritech Indiana (as well as on AADS), this will divert attention of Commission staff and of KPMG and HP – which are involved in such testing throughout the Ameritech region – from other and necessary aspects of the OSS Test, thereby threatening delay of such testing not only in Indiana but in all other States of that region. All this additional expense and threatened delay will prove to have been unnecessary should Ameritech Indiana prevail on the dispositive federal legal issue presented in the EDR-1 Appeal; and all of it can be avoided pending appeal by staying implementation of the EDR-1 Order.

(b) Staying implementation of the EDR-1 Order will not compromise, delay or otherwise adversely affect any other aspects of the OSS Test, all of which can and will proceed pending appeal of the EDR-1 Order. Indeed, by eliminating the need to focus pending the EDR-1 Appeal on including the Wholesale DSL Transport, staying implementation of the EDR-1 Order should permit other aspects of the OSS Test to proceed *more* rapidly than if that Order were not stayed and Commission staff, KPMG, HP and others involved in the Test were required to focus now on including the Wholesale DSL Transport. Hence, should Ameritech Indiana prevail on the dispositive federal legal issue presented in the EDR-1 Appeal, the result of

staying implementation of the EDR-1 Order will have been to speed completion of the OSS Test.

(c) By contrast, staying implementation of the EDR-1 Order should not materially delay overall completion of the OSS Test even if that Order is upheld on the EDR-1 Appeal, such that the Wholesale DSL Transport must be included. For the reasons just described, the stay will have permitted other aspects of the OSS Test to have proceeded more rapidly while that Appeal was pending. Also, the existing, approved Master Test Plan already covers testing of several matters that would also be entailed in any inclusion of the Wholesale DSL Transport (such as pre-ordering access to loop make-up information, collocation for DSLAMs and splitters, and ordering, provisioning and maintenance of DSL-capable loops and interoffice transport). Finally, the additional matters that would have to be tested if the Wholesale DSL Transport is included following the EDR-1 Appeal are all capable of being tested separately, without any delay or compromise of others portions of the OSS Test that proceeded during pendency of the EDR-1 Appeal.

(d) The EDR-1 Appeal is capable of rapid resolution, thereby minimizing any delay in completing the OSS Test due to staying implementation of the EDR-1 Order, even if that Order is affirmed on that Appeal. As summarized above, that Appeal focuses on a discrete, dispositive question of federal law arising on simple and undisputed facts. The Commission's record on the EDR-1 Order is not voluminous (principally comprising paper submissions discussing that legal issue), and includes no hearings or transcripts. Ameritech Indiana also intends to request the Court of Appeals for expedited treatment of the EDR-1 Appeal, and intends in any event to file its briefs therein in advance of the normal deadlines established by the Indiana Rules of Appellate Procedure.

(e) Finally, even if there were any material harm in this proceeding from any delay in completing the OSS Test due to staying implementation of the EDR-1 Order pending the EDR-1 Appeal, that harm would in any event fall on Ameritech Indiana. This proceeding before the Commission was initiated at the request of Ameritech Indiana as part of its desire ultimately to obtain authority from the Federal Communications Commission ("FCC") to provide additional services under pertinent provisions of the 1996 Telecommunications Act. The OSS Test in this proceeding involves one aspect of the various steps Ameritech Indiana must take or initiate as parts of its efforts ultimately to obtain such authority from the FCC. Any delay in completion of the OSS Test in this proceeding, and any harm from any resultant delay in Ameritech Indiana's ultimately obtaining authority from the FCC to provide additional services – the very purpose for which this proceeding was initiated at Ameritech Indiana's request – obviously falls on Ameritech Indiana and its business.

6. Because the EDR-1 Order does not require payment of money, no bond or other security is or should be required to stay its implementation pending the EDR-1 Appeal.

7. For the foregoing reasons, as well as the reasons set forth in the separate Motion for Stay filed by AADS, the EDR-1 Order should be stayed pending resolution of the EDR-1 Appeal.

WHEREFORE, Ameritech Indiana respectfully requests that the Commission enter an appropriate order staying the implementation of the EDR-1 Order pending final resolution of the EDR-1 Appeal.

Respectfully submitted,



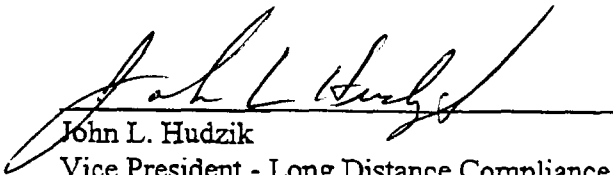
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VERIFICATION

I hereby affirm, under the penalties for perjury, that the facts set forth in the foregoing
Verified Motion for Stay are true and correct.


John L. Hudzik
Vice President - Long Distance Compliance
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CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2001 I caused copies of the foregoing Verified Motion for Stay to be served upon the following counsel of record and other interested persons by United States Mail, first-class postage prepaid, and also electronically *via* the Ameritech 271 distribution list at ameritech271@urc.state.in.us (for such counsel and other persons included on that list):

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